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Palaniandi Chetty *v.* Appavu Chettiar.

(Avoidance of Fraudulent Transfers—Necessity for Representative Actions.)

II

In India the only reported decisions dealing with the question of the necessity for a representative action to set aside a fraudulent transfer are those in *Burjorji Dorabji Patel* v. *Dhunbai* [1], *Ishwar Timappa* v. *Devar Venkappa* [2] and *Hakim Lal* v. *Mooshahar Sahu* [3], relied upon by Coutts Trotter, J. Before dealing with them, however, it is necessary to notice the decision of the Judicial Committee in *Chatterput Singh* v. *Maharaj Bahadur* [4], which is sometimes understood to have laid down that a representative action is necessary in such cases. We venture to think with Coutts Trotter and Seshagiri Aiyar, JJ. that the observations relied upon could hardly be regarded as bearing on the present question.

The dispute in the appeal before their Lordships was between Luchmiput (represented by the defendant in the suit and the appellant before their Lordships) and Dhunput (the plaintiff in the suit represented by the respondent before their Lordships). Luchmiput and Dhunput had each a mortgage of practically the suit properties executed in his favour by the same persons, Luchmiput's mortgage being, however, the prior one. Dhunput and Chatterput, son of Luchmiput, had each sued upon his mortgage without making the other a party to his suit, obtained a decree and purchased the properties at the sale held in execution. The sale held in execution of the decree in Chatterput's suit was prior to that held in execution of the decree in Dhunput's suit and Chatterput was also put in possession of the properties purchased by him. Subsequent to the decree in his suit but before the execution sale in his favour, Chatterput had also purchased out of Court the whole equity of redemption on his mortgage. Under these circumstances, Dhunput instituted the suit,

1 (1891) I. L. R. 16 B. 1.
2. (1902) I. L. R. 27 B. 146.
3. (1907) I. L. R. 34 C. 999.
4. (1905) I. L. R. 32 C. 198. (P.C.)

out of which arose the appeal before their Lordships, against Chatterput for recovery of possession of the suit properties, and in the alternative, for redemption of the mortgage in favour of Luchmiput. The plaint alleged that the decree obtained by Chatterput was collusive and fraudulent and also that the purchases made by him were illegal, null and void on the ground of the same being collusive and fraudulent, but it stated no further particulars. The Courts below found that the proceedings in Chatterput's mortgage suit were collusive and fraudulent and that Chatterput acquired no title to the suit properties by the sales held in execution of the decree therein ; and their Lordships upheld the latter finding on the ground that at the time of the said sales Chatterput was alone represented on each side of the record. There remained the question of the title of Chatterput under his private purchases. With regard to this the Subordinate Judge suggested that the purchases were at least voidable under S. 53 of the Transfer of Property Act at the instance of Dhunput. But no issue had been raised with reference to this point and the decree of the Subordinate Judge did not contain a direction for avoiding or setting aside the transfers. In the High Court the said purchases were simply disregarded without any reasons being given for so treating them beyond a passing allusion to the view of the Subordinate Judge. In this state of things their Lordships had to consider whether the private purchases did not avail Chatterput. In holding that they did their Lordships observed that the courts below ought not to have considered the question of the validity of the same under S. 53 of the Transfer of Property Act. Lord Davey, who delivered the judgment of their Lordships, said (p. 217): "No issue was stated in this suit whether the transfers (private purchases of Chatterput) were or were not liable to be set aside at the instance of Dhunput under S. 53 of the Transfer of Property Act, and no decree has been made for setting them aside. *Such an issue could be raised and such a decree could be made only in a suit properly constituted for that purpose, and this suit was not so constituted either as to parties or otherwise.* Their Lordships do not express and have not formed any opinion whether the transfers or any of them could have been avoided *in a properly constituted suit.*" The italicised passages are those relied upon in support of the view that their Lordships have decided that a suit

to set aside a fraudulent transfer under S. 53 of the Transfer of Property Act must be a representative proceeding. Their Lordships do not expressly say so and the expressions "suit properly constituted for that purpose" and "this suit was not so constituted either as to parties or otherwise" cannot be regarded as necessarily involving that view. The plaintiff, it will be noticed, claimed to recover possession of the properties, and, in the alternative, to redeem the mortgage in favour of Luchmiput; and, in support of his position, he relied upon the execution purchase by him of the suit properties and the invalidity of the proceedings in Chatterput's suit and of the purchases by him of the suit properties. The plaint did not give particulars of the circumstances rendering the private purchases of Chatterput invalid and did not pray for their being set aside as fraudulent under S. 53. The persons from whom Chatterput purchased the equity of redemption out of court were not also made parties. In short, the plaintiff rested his case solely upon (1) his execution purchase, (2) his not being made a party to the mortgage suit of Chatterput, and (3) the invalidity of the execution sale in favour of Chatterput, and did not attack the private purchases of Chatterput as being fraudulent or pray for any relief in respect thereof. If the observations of their Lordships are considered in the light of this explanation, it would seem that all that they meant was that the suit was not so framed as to raise the question of the invalidity of the private purchases of Chatterput under S. 53 of the Transfer of Property Act—not "as to parties," because the transferors, for instance, were not before the court, nor "otherwise," because the plaint did not ask for any relief in respect of the purchases. Even if this reading of the observations is not correct, it is submitted, in view of the circumstance that the point does not appear to have been argued at the bar, (See notes of arguments in *Chatterput Singh* v. *Maharaj Bahadur* [1]) and that there is no discussion of the point in the judgment with reference to the peculiar language of S. 53 of the Transfer of Property Act, that the observations should not be considered to embody the opinion of their Lordships with reference to the present question so as to preclude the Indian courts from considering it on principle and with reference to S. 53.

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1. (1905) I. L. R. 32 C. at pp. 208 to 210.

Proceeding next to the decisions of the Indian Courts, it may be pointed out at the outset that their value as precedents in regard to cases falling to be decided under S. 53 of the Transfer of Property Act is minimised by the circumstance that one of them—*Burjorji Dorabji Patel* v. *Dhunbai* [1]—was decided with reference to the English law and not to the Transfer of Property Act, which had not then been extended to the Bombay Presidency, and that the other two—*Ishvar Timappa* v. *Devar Venkappa* [2], and *Hakim Lal* v. *Mooshahar Sahu* [3] —though purporting to be decided under S. 53, merely followed English precedents and did not consider the question with reference to the language of S. 53.

In *Burjorji Dorabji Patel* v. *Dhunbai* [1], the suit was by the executors of a judgment-creditor for a declaration that they were absolutely entitled to the suit property and that the defendants, the surviving trustee and the beneficiaries under a trust deed executed by the judgment-debtor, had no right to or interest in it. The suit was for a mere declaration because the plaintiffs were in possession of the property on the date of the suit, having obtained possession from the judgment-creditor who had purchased the property in execution of his decree and taken possession thereof. The plaintiffs also prayed for a declaration, if necessary, that the trust-deed under which the defendants claimed was fraudulent and void *as against the plaintiffs and other creditors of the judgment-debtor*. Telang, J. who tried the suit, found the trust-deed to be fraudulent but dismissed the suit on the following amongst other grounds: (1) that, under 13 Eliz. c. 5 a fraudulent settlement was valid as against the settlor and that the plaintiffs, who were the representatives of the purchaser of the right, title and interest of the settlor (the judgment-debtor) and instituted the suit in that right were not entitled to have the deed set aside as fraudulent, and (2) that the suit could not be treated as a suit in the interest of all the creditors, as the principal relief claimed was a declaration of plaintiff's title to the property and the relief claimed in respect of the deed was merely ancillary. In the Course of his judgment, however, the learned judge considered the present question (pp 19-20) and stated as his conclusion that "the only proceeding by which advantage can be taken of the provisions of 13 Eliz. c. 5 is a suit on behalf of all creditors." Now

1. (1891) I. L. R. 16 B. 1. 2. (1902) I. L. R. 27 B. 146.
3. (1907) I. L. R. 34 C. 999.

it will be seen that, in the view taken by the learned judge of the nature and scope of the suit and the right in which the plaintiffs instituted it, his observations on the present question were purely *obiter*. We have already endeavoured to show that there is no rule of law even in England requiring a representative proceeding in such cases. We may also add that, regarded as a statement of the English law, the observations of the learned judge are incomplete inasmuch as he does not notice the distinction, recognised in some of the text-books dealing with the English law on the point, between the case of a judgment-creditor and that of an ordinary creditor.

In *Ishvar Timappa* v. *Devar Venkappa* [1], the question for decision was whether a person could sue under S. 53 of the Transfer of Property Act before he had obtained a decree on the debt by virtue of which he claimed to be a creditor of the transferor. Sir Lawrence Jenkins C.J. and Batty J held that he could but add (p. 150) " while a creditor in the position of the present plaintiff is entitled to sue, *he can only do so on behalf of all other creditors of the transferor*, so that when the case goes back to be dealt with on the merits, it will be necessary for the court to bear this in mind, and require such amendments as may be necessary to bring the suit into conformity with this *rule of law*." It does not appear from the report whether the question was argued at the bar and the judgment contains no discussion of the point with reference either to English precedents or to the language of S. 53.

Hakim Lal v. *Mooshahar Sahu* [2], does not carry the matter further. The view therein taken is rested almost entirely upon *Burjorji Dorabji Patel* v. *Dhunbai* [3], *Ishvar Timappa* v. *Devar Venkappa* [4], and *Chatterput Singh* v. *Maharaj Bahadur* [5], and on what the learned judges regard as " the settled rule in England in such cases"—all of which have been fully discussed above.

It will thus be seen that there is no decision of any of the Indian Courts which has considered the question with reference to the language of S. 53 of the Transfer of Property Act and yet held that under that section a representative proceeding is necessary. We are not in a position to say whether

1. (1902) I. L. R. 27 B. 146.
2. (1907) I. L. R. 34 C. 999.
3. (1891) I. L. R. 16 B. 1.
4. (1902) I. L. R. 27 B. 146.
5. (1905) I. L. R. 32 C. 193 P. C.

or not there is in the other Presidencies a well recognised practice for a defeated creditor to bring a representative action. In this Presidency there is, so far as we are aware, no such practice (see *Narayana Pattar* v. *Viraraghavan Pattar* [1], in which, though the defendant transferee was ably represented, no objection was taken to the maintainability of the suit by the unsuccessful decree-holder on the ground that it was not a representative proceeding).

It is worthy of note that, although like the old Code of Civil Procedure, the new code has not made any provision with regard to the constitution of a suit to set aside a transfer in fraud of creditors, it has, unlike its predecessor, prescribed the form of the decree to be passed in such a suit. See Appendix D, Form No. 13. The decree declares the transfer void as *against the plaintiff and all other the creditors, if any*, of the defendant. That is, the decree contains as a matter of form a declaration on behalf of creditors generally though the existence of other creditors may not be known. It will be remembered that the above form is exactly the form of declaration made under the English Statute in similar cases. This circumstance also shows that the suit in such a case need not be a representative proceeding.

It now only remains to notice the argument of inconvenience referred to by Mookerjee and Holmwood, JJ. in *Hakim Lal* v. *Mooshahar Sahu* [2], and by Coutts Trotter, J. in the case under notice. If, on a proper interpretation of S. 53 of the Transfer of Property Act, a suit is maintainable by an individual creditor, considerations of the inconvenience likely to be caused by allowing such a suit ought not to deter the courts from doing so. But it also appears to us that the argumentum ab inconvenienti has not much force in the present instance. At least two solutions can be suggested which will obviate the inconvenience: (1) it may be held, as Seshagiri Aiyar J. does in the case under notice, that the decision in a suit brought by a creditor in his own behalf will, by virtue of Explanation VI to S. 11 of the Code of Civil Procedure, 1908, be binding on the other creditors as well; or (2) the right of any defeated creditor to sue in his own behalf may be recognised but the transferee for his own protection allowed to apply to the court to have the other creditors added as parties defen-

1. (1899) I. L. R. 23 M. 184. 2. (1907) I. L. R. 34 C. 999.

dants. There has no doubt been some difference of opinion as to the applicability of Explanation VI to S. 11 to suits not constituted in accordance with O. 1, R. 8 of the Code of Civil Procedure. But we venture to think that the balance of authority is in favour of the view that Explanation VI to S. 11 of the Code is not subject to the provisions of O. 1 R. 8 thereof. (See *Rangamma* v. *Narasimhacharyulu* [1], in which all the earlier cases are referred to.)

The second question for consideration is whether a defeated creditor can impugn a fraudulent transfer only by bringing a suit for the purpose and whether he cannot do so in any other way, say, by raising in defence the plea based on S. 53 of the Transfer of Property Act. In England, the plea based on the corresponding English Statute, 13 Eliz c. 5., has been allowed to be raised by the judgment-creditor in garnishee proceedings. See *Edmunds* v. *Edmunds* [2], the case which expressly decides the point. The observations of Williams, J. in *Vyse* v. *Brown* [3], and of Vaughan Williams, L. J. in *Glegg* v. *Bromley* [4], seem no doubt to be against this view. But, as has been already shown, in neither of those cases did the question arise for decision. Further, in the first, the point does not seem to have been even argued, and, in the second, the other members of the court did not express an opinion on the point and the Divisional Court had held otherwise. See also Smith's Leading cases, 12th Ed. Vol 1, p. 17; and 15 Halsbury's laws of England, p. 89 foot-note (*f*), where it is stated "an alienation may also be held bad on interpleader proceedings, without any action to set it aside or formal declaration that it is void." It would thus seem that in England a suit is not the only proceeding open to avoid a fraudulent conveyance.

In India the question directly arose for decision in *Subramaniya Pillai* v. *Dakshinamurthi* [5], and *Abdul Kadir* v. *Ali Mia* [6], neither of which however seems to have been brought to the notice of Coutts Trotter and Seshagiri Aiyar, JJ.. In both of them, the plea based on S. 53 of the Transfer of Property Act was allowed to be raised in defence to a suit brought to enforce the fraudulent transfer. In the first case, the defendant was a person who had purchased the suit property in execution of a decree obtained by another against the transferor; in the second, the

1. (1916) 31 M. L. J. 26.
2. (1904) P. 362 at 376.
3. (1884) 13 Q. B. D. 199.
4. (1912) 3 K. B. 474 C. A.
5. (1912) 15 I. C. 193.
6. (1912) 15 C. L. J. 649.

defendant was the purchaser of the suit property in execution of a decree obtained by himself against the transferor. In the second case, the learned Judges added (though the point did not arise in the case) : "If there are more creditors and the particular creditor impleaded as a defendant stands on the same footing as other creditors, he must plead for all." The soundness of this opinion will, of course, depend upon (a) the necessity for a representative proceeding in any case—a point which has already been dealt with, and (b) the existence or non-existence of a distinction for the present purpose between a decree-holder and an ordinary creditor—a point to be presently dealt with.

Ishan Chunder Das Sarkar v. *Bishu Sirdar* [1], and *Rajani Kumar Dass* v. *Gaur Kishore Shaha* [2], and *Chidambaram Chettiar* v. *SamiAiyar* [3], are also cases in which the plea was allowed to be raised by a defendant. No doubt objection was not made in them to the competency of the plea by way of defence; but the parties were ably represented. These cases also do not appear to have been brought to the notice of Coutts Trotter and Seshagiri Aiyar, JJ.

Coming now to the decision in *Palaniandi Chetty* v. *Appavu Chettiar*[4], SeshagiriAiyar, J. holds that the transfer continues in force until it is set aside by a suit, that without first so setting it aside the creditor cannot proceed against the property transferred, and that he cannot impeach the transfer in defence to a suit brought to enforce it. The learned Judge rests his view on the broad proposition that in the case of voidable transactions the transaction continues in force until it is avoided. This is no doubt true, but the conclusion of the learned Judge rests on the assumption that the avoidance can only be by a suit brought for that purpose.

Neither S. 53 of the Transfer of Property Act, nor any other statutory provision we are aware of, requires the option of avoidance to be exercised only by means of a suit. Recourse must therefore be had to the general law governing the recission of voidable transactions to see if it can only be so exercised. Dealing with the recission of voidable contracts, Sir Frederick Pollock observes in his Principles of Contract (8th Ed, pp. 618-9). "If on the other hand the party (having the option) elects to rescind,

1. (1897) I. L. R. 24 C. 825.
2. (1908) I. L. R. 35 C. 1051.
3. (1906) I. L. R. 30 M. 6.
4. (1916) 30 M. L. J. 565.

he is to manifest that election by distinctly communicating to the other party his intention to reject the contract......One way of doing this is to institute proceedings to have the contract judicially set aside......Or if the other party is the first to sue on the contract, *the recission may be set up as a defence, and this is itself a sufficient act of recission without any prior declaration of an intention to rescind.*" The principle of the above passage—unless it is to be held inapplicable in India—is inconsistent with the assumption underlying the learned Judge's view. As for cases in this country, it must be taken to be settled, so far, at any rate, as this court is concerned, that a party to a voidable registered deed of transfer can set up the plea of its invalidity in defence to a suit brought to enforce it, and that even when his right to have it avoided by a suit has become time-barred (*Lakshmi Doss* v. *Roop Laul*) [1], see also *Ranganath Sakharam* v. *Govind Narasiv* [2]. The case of a person who is not a party to a deed but who has the option of avoiding it would appear to be an *a fortiori* one. There are several cases recognising the right of such a party to avoid otherwise than by a suit. Ss. 29 and 30 of the Guardians and Wards Act VIII of 1890 enact that a transfer by a guardian appointed under the Act of the property of his ward is *voidable at the instance of any other person affected thereby* in cases in which the permission of the court was not obtained for the transfer. It has been repeatedly held that, in a suit brought to enforce a transfer so made, it is open to the ward, who is added as a defendant, to set up the plea of its invalidity, although he had not himself sued to set it aside and that it is *sufficient if he declares his will to rescind by way of defence.* See *Sinaya Pillai* v. *Muniswami Ayyar* [3], *The Eastern Mortgage and Agency Co. Ld.* v. *Rebati Kumar Ray* [4], *and Hem Chandra Sarkar* v. *Lalit Mohan Kar* [5]. Again an alienation by a Hindu widow who had inherited the properties of her husband is not absolutely void but it is prima facie *voidable at the election of the reversionary heir.* In *Bijoy Gopal Mukerji* v. *Srimati Krishna Mahishi Debi* [6], the Judicial Committee held that the reversionary heir might *treat the alienation as a nullity without the intervention of any Courts,* and their Lordships referred to the institution of a suit by him for possession as one way of showing his election.

1. (1907) I. L. R. 30 M. 169.
2. (1904) I. L. R. 28 B. 639.
3. (1899) I. L. R. 22 M. 289.
4. (1906) 3 C. L. J. 260 at 268.
5. (1912) I. L. R. 16 C. W. N. 715.
6. (1906) 34 C. 329 P. C.

Seshagiri Aiyar, J. relies upon the cases of *Mohamad Haji Zakaria* v. *Ahmad Bhai Habib Bhai* [1], and *Rajah of Ramnad* v. *Arunachellam Chettiar* [2], in support of his view. The first of the two cases does not seem to have any bearing on the present question and the reference to it is evidently a slip. As far as we can gather from the report, all that happened in that case was that the High Court declined to answer a reference made to it by the District Judge on the ground that S. 617 of the Code of Civil Procedure, 1882, under which the reference was made, did not cover a case like the one before the learned Judges. And as for *Rajah of Ramnad* v. *Arunachellam Chettiar* [2], the Court had not there to consider or decide the question with reference to a person not a party to the deed. Even with reference to a person who is himself a party to the deed, their Lordships' observations recognise his right to set up the plea in defence. See per Miller, J. at p. 601 and per Sadasivaiyar, J. at pp. 608, 609. See also *Tiruvengada Charri* v. *Seshadri Aiyangar* [3].

Seshagiri Aiyar, J. also holds that the defeated creditor cannot proceed against the conveyed estate in execution of his decree without previously setting aside the conveyance by a suit. On this point also we are not aware of any case laying down such a rule. On the other hand in *Subramaniya Pillai* v. *Dakshinamurthi* [4], already referred to, the late Mr. Justice Sundaraiyar stated it as a matter of *settled law* "that, although as between the transferor and transferee in the case of an assignment which is intended to defeat creditors, the assignor's rights must be regarded as having vested in the assignee, the creditors of the assignor are not bound by such an assignment and are entitled to attach the property assigned as being still the property of the assignor so far as the debts are concerned." The learned Judge went on to say "It is the practice for creditors to attach property fraudulently assigned away by their judgment-debtors as being still property available for the satisfaction of their debts in execution of their decrees." We have already endeavoured to show that a suit to set aside the transfer is not necessary and that the transfer may be rescinded by a declaration of the will to rescind by way of defence (as in the case of a ward under the Guardians and Wards Act) or by commencing an action to recover possession of the

1. (1901) I. L. R. 25 B. 327.
2. (1913) 24 M. L. J. 592.
3. (1916) 30 M. L. J. 559.
4. (1912) 15 I. C. 193.

property affected (as in the case of a reversionary heir). We have also tried to show that the recission may be made without the intervention of any courts. It would then seem to follow that, in the case of a fraudulent transfer, the creditor may show his election by proceeding against the conveyed property in execution of his decree and that for that purpose he might treat the transfer as if it had not been made. This seems to be the view even in England where the conveyance is held to be perfectly valid *except to the extent to which it may be necessary to deal with the conveyed estate for satisfying the claims of the defeated creditors.* To that extent, but to that only, the conveyance is *treated as if it had not been made.* See Story's Equity Jurisprudence, 1st English Ed. para. 371; 15 Halsbury's Laws of England, p. 90; and Kerr on Fraud and Mistake, 4th Ed., p. 101. The same view is also clearly expressed by Stirling, J. in *In re Mouat* [1] "The assignments (fraudulent assignments) became void the moment the creditors claimed to treat them as such; and thereupon the property which was comprised in those assignments ceased, as against the creditors, to be the property of the assignee, and became assets for the payment of the creditors in such a way that they had a legal right to be paid out of those assets."

Vyse v. *Brown* [2] and *Clegg* v. *Bromley*[3] relied upon by Seshagiri Aiyar, J. in support of his view to the contrary do not consider the present question. The first case turned upon the construction of S. 61 of the Common Law Procedure Act, 1854, and the question whether a formal setting aside of a fraudulent conveyance was necessary was not argued or considered. The second case also does not consider the present question. The observations of Vaughan Williams, L. J. at p. 484 that the judgment-creditor could not in garnishee proceedings impeach a fraudulent assignment made by his judgment-debtor cannot be relied upon as bearing upon the question because they were rested only on the ground that in such proceedings the judgment-creditor stood exactly in the shoes of his judgment-debtor and as the latter could not impeach the assignment so also could not the former. Whether these observations correctly represent the present state of the law even in England is far from clear. See *Edmunds* v. *Edmunds*. [4] which does not appear to have been referred to in

1. (1899) 1 Ch. 831 at 834-5.
2. (1884) 13 Q. B. D. 199.
3. (1912) 3 K. B. 474 C. A.
4. (1904) P. 362 (376).

Clegg v. *Bromley* [1]. Before leaving this question, we may also point out that Coutts-Trotter, J. takes it that the property can be attached in execution and that a judgment-creditor who has so attached can set up the plea of fraudulent transfer in defence. The reason of the suggested distinction between a judgment-creditor who has attached the property and one who has not is not easy to perceive. We shall however advert to this point presently.

The third and the last question for consideration is whether there is, for the purpose of the present discussion, any distinction between the case of a judgment-creditor and that of an ordinary creditor. Seshagiri Aiyar, J., holds that there is none in India, whether or not there is any in England, at any rate, after the Judicature Act. The learned Judge assigns two reasons for his view (1) that S. 53 of the Transfer of Property Act does not make any distinction between the two cases and (2) that the position of a judgment-creditor in England is altogether different from his position in India. Coutts-Trotter, J. also seems to be of opinion that a judgment-creditor is not as such in a better position than an ordinary creditor. But the learned Judge seems to think that a judgment-creditor who has attached properties of his judgment-debtor in execution is in a better position. Though both the learned Judges are agreed in holding that there is no distinction between an ordinary creditor and a judgment-creditor as such, some passages in Halsbury's Laws of England and in May's Book seem to suggest a distinction even as between them in England. (See 15 Halsbury's Laws of England, p. 89 already referred to and pp. 311 and 315 of May's Book); and the case of *Abdul Kadir* v. *Alia Mia* [2] seems to recognise the existence of the dis-dinction in this country. *Smith* v. *Hurst* [3], *Spirett* v. *Willows* [4], *Neale* v. *Day* [5], and *Blenkinsopp* v. *Blenkinsopp* [6] are the only cases cited in the passages above referred to in support of the alleged distinction and we have not been able to find any other case in which the distinction is pointed out or recognised. When the said cases are examined, it appears, however, that in none of them was the point argued at the bar or considered in the judgment. In each of them, the plaintiff was no doubt a judgment-creditor and the decree declared the conveyance void, as against him.

1. (1912) 3 K. B. 474 C. A.
2. (1912) 15 C. L. J. 649.
3. (1852) 68 E. R. 826.
4. (1865) 46 E. R. 649.
5. (1858) 28 L. J. Ch. 45.
6. (1852) 42 E. R. 644.

In *Spirett* v. *Willows* [1], the plaintiff was also the sole creditor and had besides been appointed a creditor's assignee in the bankruptcy proceedings instituted by him against the judgment-debtor. It seems to us to be unsafe to deduce any rule from the facts of those cases because we find other cases in which even a judgment-creditor prayed for relief on behalf of other creditors also. *See*, for instance, *Neale* v. *Day* [2], and the decree in a suit by a judgment-creditor declared the conveyance in question void as against him and other creditors. See, for instance, *Bott* v. *Smith* [3].

But whatever may be the law or practice in England, it seems to us that there is no warrant for introducing such a distinction in India. S. 53 of the Transfer of Property Act does not recognise it and a judgment-creditor is not as such in any better position in this country than an ordinary creditor. With great respect to the learned Judges who decided the case of *Abdul Kadir* v. *Ali Mia* [4], we therefore think that their decision on this point is open to doubt. It may be stated that the learned Judges merely followed what they thought was the English Law on the point.

Proceeding to the suggested distinction between a judgment-creditor who has attached and one who has not, we find that Coutts-Trotter, J., relies on what his Lordship regards as the principle of the decisions in *Smith* v. *Hurst* [5], and *Neate* v. *The Duke of Marlborough* [6]. The learned Judge likens the remedy sought by a judgment-creditor in this country to the "remedy by way of executable execution in aid of the legal right given by the Judgment" in England and states that, as in England a judgment-creditor could not invoke the equitable relief until he had followed up his judgment by suing out a writ of *Fi fa* or *Elegit* as the case might be, it must be held "that the mere obtaining of a judgment in India creates no title or only an inchoate title in the judgment-creditor; and therefore he must follow up his judgment by attaching the properties in order to enable him to utilise S. 53 in answer to a claim founded on the impeached deed of transfer." With reference to the two cases relied upon by the learned Judge it may be pointed out at

1. (1865) 46 E. R. 649.
2. (1858) 28 L. J. Ch. 45.
3. (1857) 52 E. R. 957.
4. (1912) 15 C. L. J. 649.
5. (1859) 68 E. R. 826.
6. 40 E. R. 983.

the outset that in neither of them was the judgment-creditor a defendant and the question whether he could impeach the conveyance as a defendant considered. In *Smith* v. *Hurst* [1], which merely followed *Neate* v. *The Duke of Marlborough* [2] the judgment-creditor was the plaintiff and he instituted the proceeding in the Court of Chancery to set aside a fraudulent deed executed by his judgment-debtor. He alleged in his plaint that the writ of *Fi fa* sued out by him had not been returned and admitted that he had not sued out a writ of *Elegit*. On those facts Turner, V. C., held that, as the plaintiff had not proceeded at law to the extent necessary to give him a complete title, in the particular case, by suing out the writ of *Elegit*, the Court of Chancery, which merely acted in aid of the legal right, could not give the plaintiff any relief as against the freehold estate comprised in the assignment in question. Relief was, however, given as regards the leasehold and personal estate.

It will be seen that the decision in *Smith* v. *Hurst* [1] turned upon the difference between the jurisdictions of Courts of Law and of Equity in England and upon the peculiar efficacy of the writs of *Fi fa* and *Elegit*. It will also be seen that even in that matter, a difference was made between leasehold and personal estates and freehold estates. In India, on the other hand, the same courts are Courts of Law and of Equity and attachment in execution does not give the attaching creditor any lien on the property attached such as a judgment-creditor in England obtained by suing out the writ of Elegit. (As to the effect of attachment in execution in India, see *Raghunath Das* v. *Sundar Das* [3]). Further, the position of a judgment-creditor in India is, as is pointed out by Seshagiri Aiyar, J., altogether different from his position in England. With great respect to Coutts-Trotter, J., we think that the principle of *Smith* v. *Hurst* [1] and *Neate* v. *The Duke of Marlborough* [2] can have no application in India.

If the correct view is that a creditor is entitled, as a matter of substantive right, to proceed againt properties fraudulently assigned away by his judgment-debtor without first having the assignment set aside by a suit brought for the purpose, the further question arises whether, either in the claim proceedings or in the suit

1. (1852) 68 E. R. 826. 2. 40 E. R. 983.
3. (1915) 42 C. 72. (P. C.)

under O. 21 R. 63 of the Code arising therefrom, the Court can go into the question of the validity of the alienation under S. 53 of the Transfer of Property Act.

In *Subramania Pillai* v. *Dakshinamurthi*,[1] Sundara Aiyar, J. observed that the practice was for the assignee to put in a claim petition and for the executing court to go into the question of the validity of the transfer under S. 53 of the Transfer of Property Act. The learned Judge was of opinion that the question of title could be determined both in the claim proceeding and in the suit under O. 21, R. 63. And his view as to the scope of the claim provisions of the Code seems to be the prevailing view, at any rate, in this Presidency. See *Ramu Aiyar* v. *Palaniappa Chetty* [2] decided by White, C. J. and Ayling, J.

But even if the claim provisions are held to be confined to the determination of the question of physical possession, if the executing court goes into the question of title and makes an order allowing or disallowing the claim, it would seem that the order is conclusive unless a suit is filed by the claimant as provided by O. 21 R. 63. See *Bhagwan Das* v. *Raj Nath* [3].

Even if the claim provisions are held to be limited to the determination of the question of physical possession, there is no reason whatever for limiting the scope of the suit under O. 21 R. 63 in the same way. The Rule speaks of the suit as one "*to establish the right* which he (the defeated party) claims to the property in dispute". The expression "establish the right" seems *prima facie* to be comprehensive enough to cover a determination of the title to the property in dispute; and the decisions in *Subramania Pillai* v. *Dakshinamurti* [1]; *Ramu Aiyar* v. *Palaniappa Chetti* [2]; *Sadu Bin Raghu* v. *Ram Bin Govind* [4]; *Narayana Pattar* v. *Viraraghavan Pattar* [5]; *Ishan Chunder Das Sarkar* v. *Bishu Sirdar* [6]; and *Bibi Aliman* v. *Dakeshwar Pershad* [7] all proceed upon the assumption that the question can be gone into in the suit under S. 283 of the old code or O. 21 R. 63 of the present one. In *Bibi Aliman* v. *Dakeshwar Pershad* [7], the learned Judges observe. "The object of such a suit is not to have the order in the claim proceeding set aside, as would appear to have been thought in some of

1. (1912) 15 I. C. 193.
2. (1910) I. L. R. 35 M. 35 at 38.
3. (1912) I. L. R. 34 A. 365.
4. (1891) I. L. R. 16 B. 608, 614-5.
5. (1899) I. L. R. 23 M. 184
6. (1897) I. L. R. 24 C. 825.
7. (1904) 1 C.L. J. 296 at 299.

the cases to which reference is made later on, but to have the right of the claimant in the property established." In fact, with the exception of the case of *Abdul Kadir* v. *Ali Mia* [1], to be presently noticed, we have not been able to find any case in which the scope of the suit under O. 21 R. 63 is narrowed to the determination of the question of physical possession of the property attached on the date of its attachment.

In thus confining the scope of the suit under O. 21 R. 63, the learned Judges who decided the case of *Abdul Kadir* v. *Ali Mia* [1] purported to follow the decision of the Judicial Committee in *Phul Kumari* v. *Ghanshyam Misra* [2]. They thought that, in the case cited, the Privy Council had decided that the scope of a suit under S. 283 of the old code was the same as the scope of the claim proceeding and felt themselves compelled to hold that, unless there was anything in the pleadings outside the scope of S. 283 to restrain or restrict such a result, the suit under that section ought to be decided with reference to the finding as to the possession of the judgment-debtor at the time of the attachment. In this connection it may be pointed out that there are some decisions of our High Court which hold, though with reference to other matters, that the suit under O. 21, R. 63 is a form of appeal from the order in the claim proceedings and is not in its essence an original action. See *Krishnappa Chetty* v. *Abdul Kadar Saheb* [3] and *Veera Pannadi* v. *Karuppa Pannadi* [4].

With great respect to the learned Judges who decided the above cases, we venture to think that the scope of the suit under O. 21 R. 63 is wider than that of the claim proceeding and that though, for the purpose of the question which had to be decided by the Judicial Committee, their Lordships spoke of the suit as "a form of appeal," they did not lay down, and did not intend to lay down, that the suit was not an original action in the literal sense of the expression. As is well-known, the only question which arose for decision, and which was decided, in *Phul Kumari* v. *Ghanshyam Misra* [2] was as to the court-fee payable on the plaint in a suit brought under O. 21 R. 63. The plaint in the suit, which gave rise to the appeal before their Lordships, prayed for (*a*) a declaration of the plaintiff's title to the suit property; (*b*) a declaration that it was

1. (1912) 15 C. L. J. 649.
2. (1907) I. L. R. 35 C. 202 (P.C.)
3. (1914) 26 M. L. J. 448 (456).
4. (1909) 6 M. L. T. 154.

not liable to be attached and sold in execution of the attaching decree-holder's decree and (c) a permanent injunction restraining the attaching decree-holder from executing his decree against the suit properties. The plaintiff paid a court-fee of Rs. 10 for her prayer for a declaration and another fee of Rs. 10 for her prayer for a permanent injunction. Both the Courts below held that Court fee was payable on the amount of the attaching decree-holder's decree and dismissed the suit on plaintiff's default to make up the deficiency within the time allowed. Before their Lordships, the contention on behalf of the plaintiff was that Article 17 of Schedule II of the Court Fees Act applied to the case and a fee of Rs. 10 only was payable. Their Lordships upheld that contention. In doing so, they considered "*the object and the nature of the suit.*" They held that the nature of the suit was that referred to in S. 283 of the old code and its effect was to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent within the meaning of Article 17. They thought that the suit was "for review of a summary decision" and that it was "simply a form of appeal" not "unrelated" to the summary order forming the cause of action. It will be noticed that their Lordships had not to consider, and did not consider, the "scope of the suit" under S. 283 and that the point was not even argued at the bar. Under those circumstances, it seems to us to be altogether unsafe to draw any inference with reference to the question of the scope of the suit from such stray expressions used by their Lordships when dealing with an entirely different point.

A. S. VISVANATHA AIYAR.

SUMMARY OF ENGLISH CASES.

In re **Fire-proof Doors, Limited: Umney** *v.* **The Company**: (1916) 2 Ch. 142.

Company—Directors—Meeting—Parol evidence of what took place at—Admissibility.

The minutes of a meeting are not exclusive evidence of what took place at it. An unrecorded resolution may be proved *aliunde.*

British Union and National Insurance Company *v.* **Rawson**: (1916) 2 Ch. 152.

Assignment—Validity—Right of indemnity—Assignment to principal creditors.

An assignment of an indemnity, where the guarantor is interested in seeing that the principal moneys are properly applied in payment of the principal creditor, is valid at any rate, where the assignment is made to the principal creditor.

Where a company recovered judgment against a married woman in respect of a liability against which the defendant had indemnified her and the married woman assigned her right of indemnity to the company, *held* that the assignment was valid.

Silcocks *v.* **Silcocks**: (1916) 2 Ch. 161.

Will—Construction—Devise to A and "his male heir for ever"—Effect—Rule in Shelley's case.

Held, that a devise to A "and his male heir for ever" conferred upon A an estate in tail male and not an estate in fee simple.

There is a distinction between the expressions "heir male" and "male heir" where those words follow on a gift to the ancestor.

Puddephatt *v.* **Leith (No. 2)**: (1916) 2 Ch. 168.

Practice—Set-off—Allowance of—Existence of Solicitor's lien—Absence of collusion between parties—Effect.

Prima facie a set-off should not, owing to the existence of a Solicitor's lien be refused if as between the parties to the action themselves it would be fair and just to allow it and if no fraud or imposition has been practised upon the solicitor by collusion between them.

Perry v. Suffield, Limited. (1916) 2 Ch. 187 C. A.

Contract—Completion—Letters of offer and acceptance containing all terms—Variation of contract by subsequent correspondence—Permissibility—Suit for specific performance of contract—Maintainability.

Though, when a contract is contained in letters, the whole correspondence should be looked at, yet if once a definite offer has been made, and it has been accepted without qualification, and it appears that the letters of offer and acceptance contained all the terms agreed upon between the parties at the date of the offer and acceptance, the complete contract thus arrived at cannot be affected by subsequent negotiation. when once it is shewn that there is a complete contract, further negotiations between the parties cannot, without the consent of both, get rid of the contract already arrived at.

Mere arrangements which in the ordinary course of business are left to the legal advisers to settle, such as the date for completion and the payment of a deposit, are subsequent matters which do not prevent the letters of offer and acceptance constituting a completed agreement.

JOTTINGS AND CUTTINGS.

Peers and the Bar.—The death of the Lord Clifford of Chudleigh has recalled very inaccurately in some quarters—an interesting controversy as to the right of a peer to practise as a barrister. 'Lord Clifford before joining the Army, intended' we are told, 'to adopt the Bar as profession, but Lord Chief Justice Coleridge refused to call him, on the ground that a peer of the realm could not be allowed to practise. This short statement contains two vital inaccuracies. The late Lord Coleridge was never in a position to refuse to any Bar student, the power of calling to the Bar belonging of course to the Benchers of the Inns. So far from it being true that Lord Clifford was refused admission to the Bar, he was called at the Middle Temple in 1882, two years after he succeeded to the Barony. What the late Lord Coleridge appears to have done is to express the view that a peer, though a member of the Bar, was not entitled to practise,

and that view was authoritatively held to be unsound when the present Lord Coleridge, on succeeding to his title, desired to continue his practice at the Bar. Sir John Rigby, who as Attorney-General, was consulted by Lord Coleridge on the matter, expressed the opinion not only that there was no legal bar to a peer practising in the Courts, but also that there was no objection on the score of professional etiquette to such a course. The opinion expressed by Sir John Rigby in 1894 received the sanction of the late Lord Esher in 1897. On his retirement from the Bench he delivered a valedictory address to the Bar, in which he implied that though a peer, he was entitled to return, if he chose, to practise at the Bar. And this view has since been supported in practical fashion. Earl Russell was called to the Bar at Gray's Inn in 1905, and no question has ever been raised as to his right to practise. The view that a peer could not practise at the Bar was based on the ground that he was qualified as a member of the House of Lords, to take part in the judicial proceedings of the House. It is true that in the famous case of *Bradlaugh* v. *Clarke* which excited so many emotions with which legal considerations had no concern, the late Lord Denman voted with the minority of the Law Lords before whom the appeal was argued. There are, two, several older cases in which lay peers have taken part in the proceedings of the final Court of Appeal. In Grenville's Journals for instance, it is stated that in *Small* v. *Attwood* (1838) the fifth vote was given by Lord Devon, who had never held judicial office. But the judicial work of the House of Lords has now come to be regarded as exclusively within the sphere of the Law Lords, and there is no more reason for prohibiting a peer from practising at the Bar because technically he is a member of the Highest Appellate Court than there is for excluding a member of the Privy Council because he too belongs to a body which has judicial functions to perform.

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The Attorney General and Ignorantia Juris.—The Lord Chancellor in 'Iolanthi'—one of the most delightful of all Gilbertian creations—sings :—

The Law is the true embodiment
Of every thing that is excellent;
It has no kind of fault or flaw,
And I, my Lords, embody the Law.

Though the Attorney-General, belonging to a lower grade of the legal hierarchy, is not to be regarded as embodying the law with the impressive fullness that the Lord Chancellor does, yet there is a fine Gilbertian touch about the discovery made in connection with the Re-election of Ministers Bill, that Sir Frederick Smith broke the law in not submitting himself to his constituents on his appointment as first Law Officer of the Crown and had rendered himself liable through this oversight to penalties amounting to the handsome sum of 18,000 pounds. *Ignorantia Juris non excusat.* The familiar saying is true of Attorney-Generals no less than of less important mortals; but the House of Commons, not unaccustomed to generosity in such matters relieved Sir Frederick Smith of the heavy penalties which, if only the common informer had set to work before Parliament intervened, he might have been required to pay. To complete the Gilbertian character of the business, the second reading of the re-election of Ministers Bill, which, in addition to avoiding the necessity for the re-election of Mr. Lloyd George and Mr. Montagu, provided an indemnity for Sir Frederick Smith, was passed after a division in which the 'Noes' were represented by no notes save those of the two letters. Hardly less piquant than the predicament of the Attorney-General was a reminiscence which Sir Edward Carson contributed to the discussion: "I myself," he said, "was once solemnly offered by the Lord Chancellor, when I was a Law Officer, a judicial appointment for which I was not qualified, and for which I did not know that I was not qualified. The Office, presumably, was that of President of Probate, Divorce and Admiralty Division, for which, only Barristers of fifteen years' standing are eligible, while qualifying period for an ordinary High Court judgeship is ten years. So that, Lord Chancellors as well as Attorney-Generals, may be guilty of Homeric nods. Such harmless inadvertences, like the curious omission in some distinguished Judges' wills, if they afford laughter, the gods, show a gratified world that the Bench has humanity enough to err."

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The Punishment for Treason:—To discuss Casement's appeal now would be academic; but the question of execution is more practical. The penalty for High Treason is capital punishment, and the sentence of the trial court was hanging, in the usual

form. But, there is something exceptional in the carrying out of this sentence now, inasmuch as the Statute providing for executions by hanging being private (31 Vict. C. 24) specially declares that, except in cases of murder, judgment of death shall be carried into effect as if this Act had not been passed! Must there, then, be a public hanging of the traitor at Pentonville? We doubt whether, this is necessary, however fitting the punishment. The resources of civilisation, which might be shocked by such an exhibition,are not exchanged by the Act of 1868. The Royal prerogative may still be used to soften the penalty, and if authority for this is required it may be found in Lord Coke himself—so much derided by Casement's defenders—who said that 'an execution totally varying from the judgment, is illegal because the King cannot alter the judgment, though he may by his prerogative remit one part and leave the offender open to the other; as in the case of high treason, decapitation being part of the judgment, the law is satisfied, the judgment is substantially executed, if that be done, though every other part is omitted.' So in *Lady Lisle's case* the King altered the sentence from burning to beheading—women were liable to be burnt for treason till 1790—upon precedents offered to him by the Judges, who wrote: 'That execution may vary from the judgment (see the Register to 165)*; in felony where the judgment is always *suspendator per collum* yet the party may be beheaded, which is no part of the sentence.' This last dictum raises the further question whether casement might not legally be shot instead of hanged and it is noted that under the defence of the Realm Act a Civil Court may substitute shooting for hanging. But that is a matter which may well be left to the Executive, for the public conscience will not be much affected so long as the arch-traitor is not allowed to escape the fate which has been accorded to many who may only have his dupes in the Siin Fien rising—

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The Attorney's Soliloquy—With Apologies to the Bard of Avon).

To quote, or not to quote; 'tis often questioned
Whether 'tis better to embellish pleadings
With borrowed words of true euphonic merit,
Or speak plain truths in prosy words of wisdom,
And, speaking thus, prove tiresome.

To dull; to drug—with words,
And in this stupor, credulous,
Our clients may believe our word is law.
But why thus stupefy? Let us speak words
And thoughts of high intent; and let them be
The words first used by sage's long since dead.
The fact that they've endured the test of time
But proves their worth; there's great support
In calling to our aid these marvelous thoughts.
Who could resist such pleas as Portia made,
The words of Cicero, or Henry Clay?
A Judge, or Jury, ev'n could but agree
With arguments of law so reinforced.
Mere jurisprudence and the Civil Code
Are cold as glittering steel or lifeless clay;
A soulless thing; man needs the human touch;
That spark divine which renders all men kin;
The love which doth make brothers of us all.
This may result from rhetoric, not from law,
And ne'er if found in Blackstone's musty tomes.

So why not mollify what law dictates
With epigrams familiar to all men?
Enforce where need be, ridicule, retort,
Or strike the chords of sympathy, sincere
And thus t' apply the wisdom of the world,
To bring about the verdict so desired,
Is but a trick of memory, and the tongue,
Pleasing and forceful; therefore, 'tis no wrong.

M. A. W., in the Docket.

CONTEMPORARY LEGAL LITERATURE.

In the May number of the Harvard Law Review, we have this interesting statement from Mr. J. S. Ewart, the well known American writer "of waiver," all I know (or rather believe) is that, apart from what the old books tell us about a pursued thief throwing away the stolen goods, every case of waiver may be put

under one or other of four headings—Election, Estoppel, Contract and Release. Waiver in insurance cases is sometimes estoppel but almost always election. When you waive "a protest of a note that is contract. When you waive a clause in a contract that is either a new contract or estoppel. When you waive a right of action that is release or contract or nothing at all." Mr. Percy Bordwell continues his historical study "Property in Chattels."

Mr. Ezra Ripley Thayer discusses the question of *Liability without fault* laid down by *Rylands* v. *Fletcher*. The writer points out that the theory of *Rylands* v. *Fletcher* is not that suggested by Workman's Compensation Act that full responsibility is to be thrown on the undertaker for harm arising from his enterprise for it has been now settled that even in cases governed by *Rylands* v. *Fletcher* a party is not liable for the act of God or of a third party.

In good many cases to which *Rylands* v. *Fletcher* would *prima facie* be applicable, there is a competing theory which is worked, viz. the doctrine of non-delegable duty for care according to which in certain dangerous enterprises a person is liable for the consequence of even an independent contractor's negligence. Another writer Mr. Cook tries to demonstrate that even before the statutory changes in the law relating to the assignability of choses in action, they were *in substance* assignable and after assignment the assignee was clothed with all the indicia of ownership except the one of being able to sue in his own name. The assignor could not receive payments, or otherwise deal with them so as to prejudice the assignee.

An article in the American *Law Review* for May and June deals with constructive contempt that is to say not contempt of the Court directly and in its presence but a disobedience to its orders or an interference with its execution. Contempt was both a criminal offence which was punishable in Criminal Courts and a Civil matter permitting *purging* by an affidavit. There was a difference in the dealing with contempt by the Common Law Courts and the Equity Courts and there was also a difference between the higher Courts and the inferior Courts which latter were not Courts of record and had no power to summarily punish contempts of their authority. In their origin, the contempt

proceedings arose out of the contempt of the King involved in the acts complained of, who was deemed to be present in the Higher Courts.

In the Canadian *Law Times* for May, an address by Mr. Justice Beck of Alberta, is printed in which a plea is put in for more Judges made and less statutory law. He commends the rule of interpretation enacted by the Canadian Legislature that the law shall be considered as always speaking and "that whenever any matter or thing is expressed in the present tense the sense shall be applied to the circumstances as they arise so that effect may be given to each Act and every part thereof according to its spirit, true intent and meaning." The souls of the Hindu Commentators of the smritis must surely rejoice at this turn that the law is taking in the West.

To the *Law Quarterly Review* for July, Viscount Bryce contributes an appreciation of Sir Kenelm Digby, well-known to students as the author of the History of the Law of Real Property. An incident is related by the Viscount with reference to him which shows the influence which political consideration have in the selection of officers even to purely legal appointments. In 1878, he was on the eve of being appointed to an important legal post in the public service when the action of the minister in whose hands the post lay was suddenly arrested by the friends of another aspirant. They represented that Mr. Digby however otherwise qualified was a liberal and therefore ought not to be appointed. The appointment was postponed pending the return of Lord Beaconsfield from the Congress of Berlin. When he returned the matter was submitted to him and according to the story current at the time, he simply inquired, What are the political opinions of the candidates? And when told that Digby was a Liberal, replied forthwith "how can you doubt. The other man must have it. Mr. Walter Hussey Griffith combats the view taken by the Court of Appeal in *Norman* v. *Great Western Railway Company* [1] as to the duty of Railway Companies towards persons that come on business into their premises. The view taken in the case is that the duty of the Company does not differ in nature from that of an ordinary invitor towards a person coming on invitation. According to Buckley, L. J., in both cases, it is a duty to take reasonable

1. (1915) 1 K. B. 584.

care that their premises are reasonably safe for persons using them in the ordinary and customary manner and with reasonable care. The other two Lord Justices would substitute "unexpected" for unusual in the famous statement of the rule by Willes, J. in *Indermaur* v. *Dames* [1] *viz.*, that he (that is the visitor) using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger which he knows or ought to know." The writer thinks in the first place that the duty of the company is not the same as that of an ordinary writer and in the second place he thinks that Buckley, L. J. puts that duty too high while the other two Lords Justices put it too low, while all along they are under the impression that they are not altering the law as laid down in *Indermaur* v. *Dames* [1].

Mr. C. A. Hereschoff Bartlett combats the prevalent error as to the powers of the President in the French Republic. He is not, as is often represented, a mere decorative piece of state furniture, without power, without freedom of movement, dependent on the ever changing fancy of the Parliament. On the other hand, he possesses much wider powers than the President of the United States of America. While the latter has only the power to adjourn the House when the two Chambers disagree, the former can exercise the royal prerogative of dissolving the Chamber of Deputies on the advice of the Senate before the expiration of the legal term and of adjourning both the Chambers for the period of a month twice during the same session. Again, while the President of the United States can only recommend to the consideration of the Congress such measures as he deems necessary or expedient, the French President can concurrently with the two houses initiate laws. He, of his own authority, can make laws for the Colonies, except of course where the legislature has intervened. The French method of legislation, of delegating to the executive the duty of filling in the details of the statutes enacted, give the President large powers of legislation even in cases where the legislature has interfered.

1. L. R. I. C. P. 274.

He has the disposal of armed forces in time of war and can take command of the troops in person. He has the sole right of pardon but not to grant amnesty which can only be done by a statute. Above all, he has the power of negotiating and ratifying treaties. Some of the most important treaties are of this description.

Mr. Courtney Kinney gives an interesting account of *tips* in modern life of the different kinds of them accounts of *tips* in modern life, the courtesy *tip* and the commercial *tip* and the society *tip*. These *tips* provoked the ire of the great German Jurist Hering who has written a pamphlet denouncing them.

BOOK REVIEWS.

THE PROVINCIAL SMALL CAUSES COURTS ACT, 1887. *By M. M. Shafi, II. Edition by M. M. Rafi, Lahore (1916).*

The Provincial Small Causes Courts Act is an enactment of constant use and reference both in the mofussil and the Presidency Towns; and the book under review written by a distinguished lawyer and advocate of the Punjab Chief Court and carefully revised and brought up to the end of June 1916 by the present editor is bound to be of invaluable assistance both to the bench and the bar. For the exhaustiveness of treatment and the collection of cases judiciously under appropriate headings, Mr. Shafi's book has not been equalled, so far as we are aware, by any published commentary on the Act. To enable the reader to fully understand and appreciate the provisions of the Act, reference is made whenever necessary to the provisions of other enactments. To facilitate ready reference to the sections and Article of the schedule of the Act, the bare text of the Act is given at the commencement of the book. There are also five appendices to the work setting out the statement of the objects and reasons, the report of the Select Committee, the abstract of the proceedings in the Legislative Council, a table of *ad valorem* fees liviable in suits and,

the Mofussil Small Causes Courts Act of 1865. We have carefully gone through some portions of the book and we can confidently recommend it as a useful addition to a lawyer's library.

THE CURRENT STATUTES, 1915. *Published by the Law Printing House, Madras.*

This is the third year of this useful publication. The object of the publication is to bring within easy reach of all lawyers, a collection of the parliamentary enactments and orders in Council relating to India, the Acts passed by the Imperial and Local Legislatures, in India and the important notifications rules and orders made under them.

The work is divided into two portions A and B. Part A. gives the enactments of the various legislaturers and B, the rules and notifications under the various Acts. The publication is further rendered more useful by prefixing to the body of each Act, a short statement of its objects and reasons. A work of this kind every year embodying the legislative progress of this country during the year is indispensable to all lawyers.

SUPPLEMENT TO THE COMMENTARIES IN THE ESTATES LAND ACT, SECOND EDITION, *By P. Duraiswami Aiyangar, 1916.*

We are in receipt of Mr. Duraiswami Aiyangar's supplement to his valuable commentaries on the Estates Land Act. Though the idea of publishing supplements to legal publication does not usually commend itself to us, it is not without its advantages in the case of an enactment such as the Madras Estates Land Act. The Act has been in force only from 1909 but the number of decisions under the Act, each year, has been such as to justify the publication of an annotated edition of the Act every year. Under such exceptional circumstances, we should welcome the supplement under review which brings up-to-date all the decided cases includ-

ing the decisions of the Board of Revenue and the notifications issued by the Government.

THE INDIAN DECISIONS, (*Old series*) *Vol. 16* (*Law Printing House*).

We have great pleasure in announcing the publication of the 16th Volume of the series which reprints part II of Volume XIII Sudder Dewany Adaulat Reports, pages 953—1965. This volume fully maintains the high level of excellence in the printing and get-up of the Law Printing House Publications.

THE INDIAN COURT FEES AND SUITS VALUATION ACT, *by Ram Kishan, Pleader, Chief Court, Punjab, Lahore. Edition 1916.*

An annotated Edition of the Court Fees and Suits Valuation Acts brought up to date is a necessary requisite for every practitioner. Ram Kishan's book brings the references to decided cases down to the end of March 1916. The cases are arranged under appropriate headings under each article of the Schedule. There is also a historical introduction to the Court Fees Act which is valuable as setting forth the pre-existing law relating to Court Fees in India, and define the proper scope of the Act in relation to the Suits Valuation Act. The appendices to the work give the Rules and Notifications on the subject by the Government of India, the Punjab Government and the Punjab Chief Court. The book will therefore be particularly useful to practitioners in the Punjab. The indexes to the volume are full and cross references are given wherever required.

SANJIVA RAO'S *All India Civil Court Manual, Imperial Acts, Vol. II, Third Edition, 1916.*

Sanjiva Row's All India Civil Court Manual is so well known to the legal profession that we need not say many words to commend it to them. The outstanding features of the present edition are that in addition to giving all the enactments down to the date of its publication, the footnotes give the cases decided under each section till a very recent date. By having a copy of this Civil Court Manual the legal practitioner is saved from referring to the Digests at every step; and its use is invaluable in the case of out of the way Acts for which commentaries are not available. The get-up of the volume is we need hardly say excellent and will stand the constant use to which a busy practitioner is likely to subject it. At the opening of the volume, is given a table of contents of each of the Acts; and at the end of the volume is a copious index which will be particularly useful to practitioners.

PROVINCIAL INSOLVENCY ACT. *With Commentaries by R. J. Thakor, Pleader, Ahmedabad, 1916. Butterworth & Co., Ltd., Calcutta. Price Rs. 3-8-0.*

We are in receipt of a commentary on the Provincial Insolvency Act by Mr. Thakor, Pleader, Ahmedabad. At the opening of the volume, the author gives in the introduction a short history of the law of Insolvency in the moffusil under the various Codes of Civil Procedure commencing from the one of 1859; the introduction winds up by giving a connected idea of the sections of the Act commented on. Another feature of the volume under review is that there are 3 appendices giving the rules framed under the Act by the High Courts of Bombay, Calcutta and Madras. The index to the work is full. The get-up and printing of the work are excellent; and we hope the publication will be found useful by the practitioners.